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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

ABANTE ROOTER AND PLUMBING) Case No.

INC, individually and on behalf of all )

others similarly situated, ) **CLASS ACTION**

)

Plaintiff, ) **COMPLAINT FOR VIOLATIONS**

) **OF:**

vs. )

)

CAPITAL ADVANCE SOLUTIONS, )

LLC; and DOES 1 through 10, )

inclusive, )

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Defendant. )

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1. NEGLIGENT VIOLATIONS  
OF THE TELEPHONE  
CONSUMER PROTECTION  
ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS  
OF THE TELEPHONE  
CONSUMER PROTECTION  
ACT [47 U.S.C. §227(b)]
3. NEGLIGENT VIOLATIONS  
OF THE TELEPHONE  
CONSUMER PROTECTION  
ACT [47 U.S.C. §227(c)]
4. WILLFUL VIOLATIONS  
OF THE TELEPHONE  
CONSUMER PROTECTION  
ACT [47 U.S.C. §227(c)]

**DEMAND FOR JURY TRIAL**

1 Plaintiff ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),  
2 individually and on behalf of all others similarly situated, alleges the following  
3 upon information and belief based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others  
6 similarly situated seeking damages and any other available legal or equitable  
7 remedies resulting from the illegal actions of Defendant CAPITAL ADVANCE  
8 SOLUTIONS, LLC (“Defendant”), in negligently, knowingly, and/or willfully  
9 contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone  
10 Consumer Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”) and related  
11 regulations, specifically the National Do-Not-Call provisions, thereby invading  
12 Plaintiff’s privacy.

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,  
15 a California corporation with its principle place of business also in California, seeks  
16 relief on behalf of a Class, which will result in at least one class member belonging  
17 to a different state than that of Defendant, a New Jersey company. Plaintiff also  
18 seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which,  
19 when aggregated among a proposed class in the thousands, exceeds the  
20 \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity  
21 jurisdiction and the damages threshold under the Class Action Fairness Act of 2005  
22 (“CAFA”) are present, and this Court has jurisdiction.

23 3. Venue is proper in the United States District Court for the Central  
24 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does  
25 business within the State of California and Plaintiff resides within the County of  
26 Alameda.

27 **PARTIES**

28 4. Plaintiff, ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),

1 is a roofing and plumbing business in Emeryville, California and is a “person” as  
2 defined by 47 U.S.C. § 153 (39).

3 5. Defendant, CAPITAL ADVANCE SOLUTIONS, LLC  
4 (“Defendant”), is loan provider, and is a “person” as defined by 47 U.S.C. § 153  
5 (39).

6 6. The above named Defendant, and its subsidiaries and agents, are  
7 collectively referred to as “Defendants.” The true names and capacities of the  
8 Defendants sued herein as DOE DEFENDANT 1 through 10, inclusive, are  
9 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
10 names. Each of the Defendants designated herein as a DOE is legally responsible  
11 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
12 Complaint to reflect the true names and capacities of the DOE Defendants when  
13 such identities become known.

14 7. Plaintiff is informed and believes that at all relevant times, each and  
15 every Defendant was acting as an agent and/or employee of each of the other  
16 Defendant and was acting within the course and scope of said agency and/or  
17 employment with the full knowledge and consent of each of the other Defendant.  
18 Plaintiff is informed and believes that each of the acts and/or omissions complained  
19 of herein was made known to, and ratified by, each of the other Defendant.

### 20 **FACTUAL ALLEGATIONS**

21 8. Beginning on or around December 29, 2014, Defendant contacted  
22 Plaintiff on Plaintiff’s cellular telephone numbers ending in -7511, -1080, -5154, -  
23 3803, -0106, -1016, -5903, and -1636 in an attempt to solicit Plaintiff to purchase  
24 Defendant’s services.

25 9. Defendant contacted or attempted to contact Plaintiff from telephone  
26 numbers belonging to Defendant.

27 10. Defendant used an “automatic telephone dialing system” as defined  
28 by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to solicit its services.

1           11. Furthermore, at one or more instance during these calls, Defendant  
2 utilized an “artificial or prerecorded voice” as prohibited by 47 U.S.C. §  
3 227(b)(1)(A).

4           12. Defendant’s calls constituted calls that were not for emergency  
5 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

6           13. Defendant’s calls were placed to telephone number assigned to a  
7 cellular telephone service for which Plaintiff incurs a charge for incoming calls  
8 pursuant to 47 U.S.C. § 227(b)(1).

9           14. Plaintiff is not a customer of Defendant’s services and has never  
10 provided any personal information, including his telephone number, to Defendant  
11 for any purpose whatsoever.

12           15. During all relevant times, Defendant did not possess Plaintiff’s “prior  
13 express consent” to receive calls using an automatic telephone dialing system or an  
14 artificial or prerecorded voice on its cellular telephones pursuant to 47 U.S.C. §  
15 227(b)(1)(A).

16           16. Furthermore, Plaintiff’s cellular telephone number ending in -1080, -  
17 7511, -0106, -5903, -5154, and -1636 has been on the National Do-Not-Call  
18 Registry well over thirty (30) days prior to Defendant’s initial calls.

19           17. Defendant placed multiple calls soliciting its business to Plaintiff on  
20 its cellular telephones beginning in or around September of 2016.

21           18. Such calls constitute solicitation calls pursuant to 47 C.F.R. §  
22 64.1200(c)(2) as they were attempts to promote or sell Defendant’s services.

23           19. Plaintiff received numerous solicitation calls from Defendant within a  
24 12-month period.

25           20. Plaintiff requested for Defendant to stop calling Plaintiff during one  
26 of the initial calls from Defendant, thus revoking any prior express consent that had  
27 existed and terminating any established business relationship that had existed, as  
28 defined under 16 C.F.R. 310.4(b)(1)(iii)(B).



1 such calls prior to the calls within the four years prior to  
2 the filing of this Complaint.

3 25. The class concerning the National Do-Not-Call violation (hereafter  
4 “The DNC Class”) is defined as follows:

5 All persons within the United States registered on the  
6 National Do-Not-Call Registry for at least 30 days, who  
7 had not granted Defendant prior express consent nor had  
8 a prior established business relationship, who received  
9 more than one call made by or on behalf of Defendant  
10 that promoted Defendant’s products or services, within  
11 any twelve-month period, within four years prior to the  
12 filing of the complaint.

13 26. The class concerning the National Do-Not-Call violation following  
14 revocation of consent and prior business relationship, to the extent they existed  
15 (hereafter “The DNC Revocation Class”) is defined as follows:

16 All persons within the United States registered on the  
17 National Do-Not-Call Registry for at least 30 days, who  
18 received more than one call made by or on behalf of  
19 Defendant that promoted Defendant’s products or  
20 services, after having revoked consent and any prior  
21 established business relationship, within any twelve-  
22 month period, within four years prior to the filing of the  
23 complaint.

24 27. Plaintiff represents, and is a member of, The ATDS Class, consisting  
25 of all persons within the United States who received any solicitation telephone calls  
26 from Defendant to said person’s cellular telephone made through the use of any  
27 automatic telephone dialing system or an artificial or prerecorded voice and such  
28 person had not previously not provided their cellular telephone number to  
Defendant within the four years prior to the filing of this Complaint.

28 28. Plaintiff represents, and is a member of, The ATDS Revocation Class,

1 consisting of all persons within the United States who received any  
2 solicitation/telemarketing telephone calls from Defendant to said person's cellular  
3 telephone made through the use of any automatic telephone dialing system or an  
4 artificial or prerecorded voice and such person had revoked any prior express  
5 consent to receive such calls prior to the calls within the four years prior to the  
6 filing of this Complaint.

7 29. Plaintiff represents, and is a member of, The DNC Class, consisting  
8 of all persons within the United States registered on the National Do-Not-Call  
9 Registry for at least 30 days, who had not granted Defendant prior express consent  
10 nor had a prior established business relationship, who received more than one call  
11 made by or on behalf of Defendant that promoted Defendant's products or services,  
12 within any twelve-month period, within four years prior to the filing of the  
13 complaint.

14 30. Plaintiff represents, and is a member of, The DNC Revocation Class,  
15 consisting of all persons within the United States registered on the National Do-  
16 Not-Call Registry for at least 30 days, who received more than one call made by or  
17 on behalf of Defendant that promoted Defendant's products or services, after  
18 having revoked consent and any prior established business relationship, within any  
19 twelve-month period, within four years prior to the filing of the complaint.

20 31. Defendant, their employees and agents are excluded from The  
21 Classes. Plaintiff does not know the number of members in The Classes, but  
22 believes the Classes members number in the thousands, if not more. Thus, this  
23 matter should be certified as a Class Action to assist in the expeditious litigation of  
24 the matter.

25 32. The Classes are so numerous that the individual joinder of all of its  
26 members is impractical. While the exact number and identities of The Classes  
27 members are unknown to Plaintiff at this time and can only be ascertained through  
28 appropriate discovery, Plaintiff is informed and believes and thereon alleges that



1 The Classes includes thousands of members. Plaintiff alleges that The Classes  
2 members may be ascertained by the records maintained by Defendant.

3 33. Plaintiff and members of The ATDS Class and The ATDS Revocation  
4 Class were harmed by the acts of Defendant in at least the following ways:  
5 Defendant illegally contacted Plaintiff and ATDS Class members via their cellular  
6 telephones thereby causing Plaintiff and ATDS Class and ATDS Revocation Class  
7 members to incur certain charges or reduced telephone time for which Plaintiff and  
8 ATDS Class and ATDS Revocation Class members had previously paid by having  
9 to retrieve or administer messages left by Defendant during those illegal calls, and  
10 invading the privacy of said Plaintiff and ATDS Class and ATDS Revocation Class  
11 members.

12 34. Common questions of fact and law exist as to all members of The  
13 ATDS Class which predominate over any questions affecting only individual  
14 members of The ATDS Class. These common legal and factual questions, which  
15 do not vary between ATDS Class members, and which may be determined without  
16 reference to the individual circumstances of any ATDS Class members, include,  
17 but are not limited to, the following:

- 18 a. Whether, within the four years prior to the filing of this  
19 Complaint, Defendant made any telemarketing/solicitation call  
20 (other than a call made for emergency purposes or made with  
21 the prior express consent of the called party) to a ATDS Class  
22 member using any automatic telephone dialing system or any  
23 artificial or prerecorded voice to any telephone number  
24 assigned to a cellular telephone service;
- 25 b. Whether Plaintiff and the ATDS Class members were damaged  
26 thereby, and the extent of damages for such violation; and
- 27 c. Whether Defendant and their agents should be enjoined from  
28 engaging in such conduct in the future.



1        35. As a person that received numerous telemarketing/solicitation calls  
2 from Defendant using an automatic telephone dialing system or an artificial or  
3 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting  
4 claims that are typical of The ATDS Class.

5        36. Common questions of fact and law exist as to all members of The  
6 ATDS Revocation Class which predominate over any questions affecting only  
7 individual members of The ATDS Revocation Class. These common legal and  
8 factual questions, which do not vary between ATDS Revocation Class members,  
9 and which may be determined without reference to the individual circumstances of  
10 any ATDS Revocation Class members, include, but are not limited to, the  
11 following:

- 12            a. Whether, within the four years prior to the filing of this  
13 Complaint, Defendant made any telemarketing/solicitation call  
14 (other than a call made for emergency purposes or made with  
15 the prior express consent of the called party) to an ATDS  
16 Revocation Class member, who had revoked any prior express  
17 consent to be called using an ATDS, using any automatic  
18 telephone dialing system or any artificial or prerecorded voice  
19 to any telephone number assigned to a cellular telephone  
20 service;
- 21            b. Whether Plaintiff and the ATDS Revocation Class members  
22 were damaged thereby, and the extent of damages for such  
23 violation; and
- 24            c. Whether Defendant and their agents should be enjoined from  
25 engaging in such conduct in the future.

26        37. As a person that received numerous telemarketing/solicitation calls  
27 from Defendant using an automatic telephone dialing system or an artificial or  
28 prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff

1 is asserting claims that are typical of The ATDS Revocation Class.

2       38. Plaintiff and members of The DNC Class and DNC Revocation Class  
3 were harmed by the acts of Defendant in at least the following ways: Defendant  
4 illegally contacted Plaintiff and DNC Class and DNC Revocation Class members  
5 via their telephones for solicitation purposes, thereby invading the privacy of said  
6 Plaintiff and the DNC Class and DNC Revocation Class members whose telephone  
7 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class  
8 and DNC Revocation Class members were damaged thereby.

9       39. Common questions of fact and law exist as to all members of The  
10 DNC Class which predominate over any questions affecting only individual  
11 members of The DNC Class. These common legal and factual questions, which do  
12 not vary between DNC Class members, and which may be determined without  
13 reference to the individual circumstances of any DNC Class members, include, but  
14 are not limited to, the following:

- 15       a. Whether, within the four years prior to the filing of this  
16 Complaint, Defendant or its agents placed more than one  
17 solicitation call to the members of the DNC Class whose  
18 telephone numbers were on the National Do-Not-Call Registry  
19 and who had not granted prior express consent to Defendant and  
20 did not have an established business relationship with  
21 Defendant;
- 22       b. Whether Defendant obtained prior express written consent to  
23 place solicitation calls to Plaintiff or the DNC Class members'  
24 telephones;
- 25       c. Whether Plaintiff and the DNC Class member were damaged  
26 thereby, and the extent of damages for such violation; and
- 27       d. Whether Defendant and their agents should be enjoined from  
28 engaging in such conduct in the future.

1       40. As a person that received numerous solicitation calls from Defendant  
2 within a 12-month period, who had not granted Defendant prior express consent  
3 and did not have an established business relationship with Defendant, Plaintiff is  
4 asserting claims that are typical of the DNC Class.

5       41. Common questions of fact and law exist as to all members of The  
6 DNC Class which predominate over any questions affecting only individual  
7 members of The DNC Revocation Class. These common legal and factual  
8 questions, which do not vary between DNC Revocation Class members, and which  
9 may be determined without reference to the individual circumstances of any DNC  
10 Revocation Class members, include, but are not limited to, the following:

- 11           a. Whether, within the four years prior to the filing of this  
12 Complaint, Defendant or its agents placed more than one  
13 solicitation call to the members of the DNC Class whose  
14 telephone numbers were on the National Do-Not-Call Registry  
15 and who had revoked any prior express consent and any  
16 established business relationship with Defendant;
- 17           b. Whether Plaintiff and the DNC Class member were damaged  
18 thereby, and the extent of damages for such violation; and
- 19           c. Whether Defendant and their agents should be enjoined from  
20 engaging in such conduct in the future.

21       42. As a person that received numerous solicitation calls from Defendant  
22 within a 12-month period, who, to the extent one existed, had revoked any prior  
23 express consent and any established business relationship with Defendant, Plaintiff  
24 is asserting claims that are typical of the DNC Revocation Class.

25       43. Plaintiff will fairly and adequately protect the interests of the members  
26 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of  
27 class actions.

28       44. A class action is superior to other available methods of fair and

efficient adjudication of this controversy, since individual litigation of the claims of all Classes members is impracticable. Even if every Classes member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Classes member.

45. The prosecution of separate actions by individual Classes members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Classes members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

46. Defendant have acted or refused to act in respects generally applicable to The Classes, thereby making appropriate final and injunctive relief with regard to the members of the Classes as a whole.

### **FIRST CAUSE OF ACTION**

#### **Negligent Violations of the Telephone Consumer Protection Act**

#### **47 U.S.C. §227(b).**

#### **On Behalf of the ATDS Class and ATDS Revocation Class**

47. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-46.

48. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

49. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b), Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

50. Plaintiff and the ATDS Class and ATDS Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

## **SECOND CAUSE OF ACTION**

### **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

#### **47 U.S.C. §227(b)**

#### **On Behalf of the ATDS Class and the ATDS Revocation Class**

51. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-46.

52. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227(b), and in particular 47 U.S.C. § 227 (b)(1)(A).

53. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b), Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

54. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

## **THIRD CAUSE OF ACTION**

### **Negligent Violations of the Telephone Consumer Protection Act**

#### **47 U.S.C. §227(c)**

#### **On Behalf of the DNC Class and the DNC Revocation Class**

55. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-46.

56. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular *47 U.S.C. § 227 (c)(5)*.

57. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

58. Plaintiff and the DNC Class and DNC Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

#### **FOURTH CAUSE OF ACTION**

#### **Knowing and/or Willful Violations of the Telephone Consumer Protection**

#### **Act**

#### **47 U.S.C. §227 et seq.**

#### **On Behalf of the DNC Class and DNC Revocation Class**

59. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-46.

60. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, in particular *47 U.S.C. § 227 (c)(5)*.

61. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)*.

62. Plaintiff and the DNC Class and DNC Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

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3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

5 **FIRST CAUSE OF ACTION**

6 **Negligent Violations of the Telephone Consumer Protection Act**

7 **47 U.S.C. §227(b)**

- 8 • As a result of Defendant's negligent violations of 47 U.S.C.  
9 §227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation  
10 Class members are entitled to and request \$500 in statutory damages,  
11 for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).  
12 • Any and all other relief that the Court deems just and proper.

13 **SECOND CAUSE OF ACTION**

14 **Knowing and/or Willful Violations of the Telephone Consumer Protection  
15 Act**

16 **47 U.S.C. §227(b)**

- 17 • As a result of Defendant's willful and/or knowing violations of 47  
18 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS  
19 Revocation Class members are entitled to and request treble damages,  
20 as provided by statute, up to \$1,500, for each and every violation,  
21 pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).  
22 • Any and all other relief that the Court deems just and proper.

23 **THIRD CAUSE OF ACTION**

24 **Negligent Violations of the Telephone Consumer Protection Act**

25 **47 U.S.C. §227(c)**

- 26 • As a result of Defendant's negligent violations of 47 U.S.C.  
27 §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class  
28 members are entitled to and request \$500 in statutory damages, for  
each and every violation, pursuant to 47 U.S.C. 227(c)(5).



- Any and all other relief that the Court deems just and proper.

#### **FOURTH CAUSE OF ACTION**

#### **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

#### **47 U.S.C. §227(c)**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

#### **JURY DEMAND**

63. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 21st Day of March, 2018.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman  
Todd M. Friedman  
Law Offices of Todd M. Friedman  
Attorney for Plaintiff